

Minutes of the Special and Regular Meeting of November 14, 2006

One Twin Pines Lane, Belmont, California

CLOSED SESSION - 6:00 P.M.

- A. Conference with Labor Negotiator, Terry Belanger, pursuant to Government Code Section No. 54957.6: BPOA
- B. Conference with Real Property Negotiator, Interim City Manager Belanger, Pursuant to Government Code Section 54956.8, for Property known as "Waterdog Lake" (APN# 045 380 010); under negotiation: price and terms of payment.
- C. Conference regarding Public Employee Appointment Pursuant to Government Code Section 54957: City Manager

Attended by Councilmembers Feierbach, Warden, Dickenson, Lieberman (arr. 6:10 P.M.), Mathewson, Interim City Manager Belanger (Items A & B), City Attorney Zafferano (Items A & B), Interim Human Resources Director Sam (Item A) Fran Buchanan (Negotiator, Item A), Police Chief Mattei (Item A), Police Captain Wood (Item A), Public Works Director Davis (Item B) Community Development Director de Melo (Item B). City Clerk Cook was excused from attending.

ADJOURNMENT at this time, being 7:30 P.M.

Terri Cook
City Clerk

This meeting not tape-recorded or videotaped.

REGULAR MEETING

CALL TO ORDER 9:30 P.M. (Note: Special BFPD and Regular RDA Meetings held prior.)

ROLL CALL

COUNCILMEMBERS PRESENT: Lieberman, Feierbach, Dickenson, Warden, Mathewson

COUNCILMEMBERS ABSENT: None

Staff Present: Interim City Manager Belanger, City Attorney Zafferano, Community Development Director de Melo, Police Chief Mattei, Public Works Director Davis, Finance Director Fil, City Clerk Cook.

REPORT FROM CLOSED SESSIONS (from earlier in evening and following Council meeting of 10/24/06).

Mayor Mathewson stated that direction was given but no action taken on the Closed Sessions.

PUBLIC COMMENTS AND ANNOUNCEMENTS

Kristen Mercer, Belmont 4-H Club, announced that the trees to be planted at a special ceremony on November 19 represented the final phase of a three-year tree-planting program. She thanked the Parks and Recreation Department for their support of this program.

John Violet, Belmont resident, stated that Belmont had recently lost two prominent citizens: Ed Pliska and Ted Peceimer. He requested that tonight's meeting be adjourned in their memory.

COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS

Councilmember Warden thanked the Finance Department for its efforts on the annual report. He noted that it contained valuable detailed information.

Councilmember Lieberman welcomed a new restaurant to Belmont, located in the plaza at Masonic and Hiller.

Mayor Mathewson announced that Sunday, November 19th, would be the final Farmer's Market of the 2006 season. He also announced the Craft Faire to be held at the Senior and Community Center on November 18 and 19. He noted that Deputy City Clerk Harrington would be leaving Belmont to become City Clerk in Newark, and he wished her well in her new position. He announced that the Fire Assessment ballot tallying would take place starting Wednesday morning, November 15, which was open to the public. He noted that the City Council meeting of November 28th will include a joint meeting with the Parks and Recreation Department and the City Council annual reorganization.

AGENDA AMENDMENTS

City Clerk Cook announced that members of the public requested the removal of Consent Calendar **Item 4-D** (Resolution Defining the Level of Maintenance for Paper Streets) and **Item 4-F** (Holiday Furlough from December 25 through January 1, 2007) for separate consideration.

Councilmember Dickenson requested the removal of **Item 4-B** (Resolution Approving Final Acceptance of the Cambridge Condominium Development) for separate consideration.

ITEMS APPROVED ON CONSENT CALENDAR

Approval of Minutes of Special and Regular Meeting of October 10, 2006, and Special and Regular Meeting of October 24, 2006

Approval of Resolution 9824 Authorizing the City of Belmont to Enter into a Freeway Maintenance Agreement with the State of California for the U.S. Highway 101 Bicycle/Pedestrian Bridge Project, City Contract Number 433

Approval of Resolution 9825 Designating Applicant's Agents for Disaster Assistance

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Dickenson, the Consent Agenda was unanimously approved, as amended, by a show of hands.

ITEMS REMOVED FROM CONSENT CALENDAR FOR SEPARATE CONSIDERATION

Resolution Approving Final Acceptance of the Cambridge Condominium Development

In response to Councilmember Dickenson's inquiry regarding the trail sign which had been removed, Community Development Director de Melo stated that a clause could be added to the Resolution to ensure its replacement.

ACTION: On a motion by Councilmember Dickenson, seconded by Councilmember Feierbach, Resolution 9826 Approving Final Acceptance of the Cambridge Condominium Development, amended as noted, was unanimously approved by a show of hands.

Resolution Defining the Level of Maintenance for Paper Streets

Jeff Marshall, Belmont resident, stated he notified the City a year ago regarding shrubs and a problem with the drainage ditch on private property. The City trimmed the shrubs and cleaned out the ditch. This is an ongoing problem, since the shrubs will grow back. He feels the proposed resolution is the City's way to shirk legal responsibility. There has been no resolution regarding Marburger Avenue. Upper Lock is not a paper street, and it is defined as a street in the San Juan Plan. The City has a legal responsibility to maintain it even if it is not up to current standards.

Carol Schoening, Belmont resident, expressed concern regarding the definition of paper street. Upper Lock has been constructed, as has Marburger Avenue. Marburger has not been fixed. She recommended outlining each street that is defined as paper street.

Bill Schoening, Belmont resident, described a recent medical emergency where he did not call 9-1-1 because of the condition of Marburger Avenue, and he was driven to a nearby fire station for treatment. Marburger needs to be fixed. Two houses were allowed to be built on a nearby street which caused the slide. The City fixed the slide which caused a drainage problem and created an additional slide.

Molly Samietz, Belmont resident, stated it is an economic liability to live on Marburger Avenue. There is no word regarding the FEMA money to fix the street. Property values have been affected, and properties are unsellable. She noted that the staff report contains vague wording regarding maintenance.

Stuart Hoffman, Belmont resident, expressed concern regarding Lower Lock. He described the attempt at creating a culvert in the 1990's, but money ran out. Soil runoff and erosion is the issue as there is no retaining wall. Fire vehicles are unable to access properties, which is a risk for other homes.

Public Works Director Davis stated that the San Juan Plan accepted some streets with and some without maintenance. There is currently no definition of the required level of maintenance, and residents have been asking this question. He noted that the City cut back and cleaned a drain on Upper Lock and Monte Cresta, and billed the property owner. Three streets are addressed in the proposed resolution, not including Marburger Avenue. The geotechnical report received on Marburger will be provided to the owners. Direction from City Council has been given regarding Marburger Avenue in Closed Sessions. He clarified that Upper lock is paved but is not constructed to standards.

Councilmember Warden stated that the resolution clearly defines level of maintenance.

Councilmember Dickenson stated that Upper Lock is needed for access to other properties.

Council concurred regarding the need for a map and definition of “paper street”. No action was taken. This matter was tabled.

Holiday Furlough from December 25 through January 1, 2007

Interim City Manager Belanger described the proposed holiday closure for City Hall offices. He noted that one of the bargaining units did not support the use of the term “furlough”. He noted that the closure was redrafted to remove reference to “furlough”. Staff will meet and confer with the bargaining units regarding the proposed closure. The proposed closure of City Hall offices would provide ten days of uninterrupted time off. He stated that a member of one of the bargaining units had conducted an informal survey, the results of which indicated that a number of employees had already planned to be off, and others supported the closure.

Jocelyn Won, AFSCME Council 57 Representative, stated this furlough is viewed as a forced vacation. The City is required to meet and confer, which has not been done formally. The union has been blindsided by this proposal, and labor laws have been flaunted. The union does not want the closure. Employees should be allowed to take the time if desired. The City could operate on a skeleton crew. This is deemed a layoff, and a grievance will be filed if the furlough is forced on the employees.

Kirk Buckman, AFSCME Union Stewart, stated the furlough is a layoff and is a violation of the Memorandum of Understanding with AFSCME and the labor law. He recommended directing staff to work with the unions to come to a compromise to allow employees to work if they desire.

Interim City Manager Belanger stated that the City Council should not approve the closure if they do not want City Hall offices to close. A skeleton crew does not provide services to the public.

Councilmember Warden agreed regarding the need to be responsive to the public. He does not support the use of a skeleton crew, as there is an expectation of service. He is not in favor of the closure.

Councilmember Lieberman stated that there is not much demand for service during the holidays, but if City Hall is open, full service should be provided. He does not wish to invoke a grievance.

Interim City Manager Belanger stated that the membership should decide, and members have indicated they desire the closure.

Councilmember Dickenson noted that City Hall has been closed during the holiday week in previous years.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Dickenson, and unanimously approved by a show of hands to continue the matter to the meeting of November 28, 2006.

Interim Human Resources Director Sam stated that it was not staff's intent to bypass the meet and confer provisions regarding the closure. This item was brought forward to obtain Council's approval first.

OLD BUSINESS

Further Discussion and Direction Regarding Amendments to Belmont Municipal Code Section 20.5, Regulation of Smoking

City Attorney Zafferano reviewed the policy decisions to be made regarding potential changes to this ordinance. He provided a model ordinance for addressing smoking in multi-unit buildings. The American Lung Association matrix outlines the pros and cons of issues related to this matter. He noted that Council could consider a new ordinance, or modify the existing ordinance regulating smoking.

In response to Council questions, City Attorney Zafferano stated that it is unknown how to regulate smoke in relation to HVAC units. He recommended setting a standard. He also noted that there has been no evidence presented regarding issues with smoke in single-family residences, but Council has received much feedback regarding multi-unit dwellings. He clarified that no cities have regulated smoking in single-family residences. There may be a need to address outdoor areas of single-family homes.

MEETING EXTENSION at this time, being 10:30 p.m., on a motion by Councilmember Warden, seconded by Councilmember Dickenson, the meeting was unanimously extended by 30 minutes.

Discussion ensued.

In response to Council questions, City Attorney Zafferano noted that there are conflicting opinions regarding the establishment of smoking prohibitions in HUD facilities. He noted that other HUD facilities have voluntarily prohibited smoking. The City is unable to prosecute all complaints or lawsuits. The proposed ordinance could provide for private action with the City's ability to intervene on a case-by-case basis. He described options for relief in various scenarios.

George Hubbard, Belmont resident, expressed support for a total ban on smoking in multi-unit buildings. Smoke can violate others' spaces. He noted he has had to seal off the vent in his unit. There are no sprinklers in his building.

Marcie Wright, Belmont resident, stated that second-hand smoke is adverse. Ventilation technology cannot be relied on. The only protection is a prohibition. Many are unaware of the problem. A neighbor who smokes has rights, but the non-smoker does not.

In response to Councilmember Lieberman, Ms. Wright clarified that she has attempted to use a fan, which has been ineffective. She noted that smoke permeates through the walls and the outlets.

Phillip Jarosz, Belmont resident, stated he has family and friends who reside at Bonnie Brae. He stated that the State of Hawaii is watching these proceedings in Belmont. This is an opportunity to do more than the Cities of Dublin and Calabasas have done with their recent ordinances.

Becky Husman, Santa Clara resident, supports the Dublin model, and would like second-hand smoke to be declared a public nuisance.

Serena Chen, American Lung Association, supports the nuisance designation, and recommended including outdoor areas and a buffer zone of 20 feet. She noted that experts have advised that there are no safe methods of ventilation. She described a recent lawsuit relating to this issue.

R. Mark Korwald, Belmont resident, stated he has a sensitivity to smoke. He has tried using a fan, which drew the smoke in. There is no way to abate it. Second-hand smoke may be more dangerous because it burns slower. He expressed concern regarding fire insurance rates.

City Attorney Zafferano clarified that the current ordinance already addresses some enclosed spaces. He recommends the Council designate second-hand smoke as a public nuisance.

Councilmember Feierbach stated that other cities may follow Belmont's lead on this issue. She supports a prohibition of smoking in multi-unit dwellings.

Councilmember Warden stated this is an opportunity for leadership on this issue. Smoke should not be allowed to drift. He supports a ban on smoking everywhere except within the confines of single-family residences.

Mayor Mathewson expressed concern regarding enforcement.

Police Chief Mattei noted there have been no calls to the police department regarding smoke. He stated that if the violation were handled administratively, he recommended using a warning system first.

Councilmember Lieberman stated that second-hand smoke is the main issue, and it is hard to protect everyone. Exposure over a sustained period of time is a big issue. He supports prohibiting smoking in parks, and outdoor City events. He is reluctant to ban smoking in apartments or homes, and expressed concern regarding grievances and enforcement. He supports the Dublin model, as it empowers citizens to resolve the issue. He does not support an ordinance that the City would not be enforcing. The City should enforce its laws.

MEETING EXTENSION at this time, being 11:00 p.m., on a motion by Councilmember Dickenson, seconded by Councilmember Warden, the meeting was unanimously extended by 30 minutes.

Councilmember Dickenson stated he does not support a smoking prohibition in single-family homes, but would support the ban in every other place. There is a need to identify areas for smoking.

Councilmember Warden supports a prohibition in all public areas, and this is an opportunity to be a smoke-free City. This issue needs to be addressed at the local level where the tobacco industry has no control. He would support the strongest ordinance.

ACTION: Councilmember Warden made a motion, seconded by Councilmember Feierbach, to direct staff to draft an ordinance which would prohibit smoking everywhere except in single-family detached residences and surrounding yards and decks, to include the public nuisance declaration with civil recourse, with enforcement to be complaint-based.

Councilmember Lieberman stated he does not support the motion, but will vote yes for unanimity. Council is hypocritical by saying it is permissible to break the law if no one sees.

Councilmember Warden stated that many violations of many laws occur without citation, such as speeding and jaywalking. This ordinance would make people aware of their behavior.

Police Chief Mattei noted that the police can only cite violations they observe, or have reasonable believe a violation has occurred.

Councilmember Feierbach stated she desires a solution to address the issues presented by the speakers.

Discussion ensued regarding various scenarios and enforcement actions.

Councilmember Lieberman stated if the public nuisance declaration were made, people may voluntarily change behavior.

ACTION: On the original motion made by Councilmember Warden, seconded by Councilmember Feierbach, approved unanimously on a roll call vote (5-0).

MATTERS OF COUNCIL INTEREST/CLARIFICATION

- A. Consideration to widen the driveway at the Belmont library and to stripe the lanes for traffic flow (Warden)
- B. Consideration to Direct City Attorney to seek Fair Political Practices Commission (FPPC) advisory regarding future slope/density ordinances (Warden)
- C. Consideration of city policy to purchase hybrid vehicles and phasing out of diesel vehicles (Feierbach).

These items were continued to the meeting of December 12, 2006.

ADJOURNMENT at this time, being 11:30 p.m., this meeting was Adjourned in memory of resident Ted Peceimer and resident and former Judge Ed Pliska.

Terri Cook
Belmont City Clerk

Meeting Tape Recorded and Videotaped
Audio Recording 648